

Internal Revenue Service  
District Director

Department of the Treasury  
P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:

EP/EO

Employer Identification Number:

Date: \*JAN 19 1996

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

1/18/95

12/27/95

1/11/96

[REDACTED]

If we do not hear from you within the time specified, this will become our final determination.

Sincerely yours,

[REDACTED]

District Director

Enclosures: 3

cc:

[REDACTED]

Enclosure I

[REDACTED]

Facts

Information submitted with your application indicates that you were incorporated on [REDACTED]. Your Articles of Incorporation states that you were formed to advance electronic information processing through mutual education and the free interchange of ideas concerning system use.

Your members are manufacturers and distributors of industrial equipment who use [REDACTED] software in the performance of their operations. Section 1 in Article III of The Code of Regulations provides that to be a member, an individual or company must be a licensed user of the [REDACTED]. A licensed user is defined as an owner of the system currently paying enhancement fees.

The purpose of your organization is to stimulate the further development of the software system being used by members by providing a forum for members to exchange information and discuss their common concerns about the use and possible improvement of related software applications.

You accomplish your purposes by sponsoring an annual week-long conference. At the conference, finance and/or information systems personnel of members attend discussion groups and presentations to discuss and learn about new applications or uses, new product developments, quality problems with existing software, and operational and technical problems relating to the software.

You indicate in the application that outside software experts are invited to make presentations at the annual conference. According to the itinerary of the [REDACTED] Conference, [REDACTED] provided speakers and acted as a facilitator in breakout sessions.

The conference is also devoted to the Board meeting and committee reports. The Program Review and Quality Committees report to the members on the results of the Committees' efforts during the past year. Your narrative description of activities indicates that the mission assigned to the Quality Committee is to identify and discuss shortcomings of existing software products, and to communicate the need for improvements to the software designers while that of the Program Review Committee is to focus on identifying and prioritizing desirable modifications to the software currently available. Section 1 in Article VII of the Code of Regulations states that the Program Review Committee's purpose "shall be determining and prioritizing modifications to the [REDACTED]".

[REDACTED]

You are managed and controlled by the Board of Trustees. The officers, who are also Trustees, consist of a President, Vice President, Treasurer, and Secretary. With the exception of the Secretary, all the officers are elected from the Trustees by members. Section 7 in Article VIII of the Code of Regulations states that the office of Secretary "will be permanently held by [REDACTED]".

You have indicated that you do not sell products to individual members nor provide individualized troubleshooting or computer programming services to members. You are supported by membership dues (\$[REDACTED]/year) and registration fees from the annual meetings. There is no indication in the application that you are financially supported by [REDACTED].

Law

Section 501(c)(6) of the Code exempts from Federal income tax business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations defines a business league as an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Application of Law

In National Muffler Dealers Assn., Inc. v. U.S., 440 U.S. 472 (1979), the United States Supreme Court held that a trade organization for muffler dealers, which confined its membership to dealers franchised by a particular company and its activities to the business of that company, was not a "business league" within the meaning of section 501(c)(6) of the Code. In National Muffler, the Court adopted the Services's interpretation of the "line of business" to mean that an organization's activities must be directed to the improvement of business conditions in an "entire industry" or "all components of one industry within a geographic area".

In Guide International Corp. v. U.S., 89 T.C. 2345 (May 8, 1990), the Court concluded that an association of computer users did not qualify for exemption under section 501(c)(6) of the Code because it benefited essentially the users of IBM. In Guide, although the stated purpose of the organization was to facilitate the use and exchange of information regarding data processing equipment in general, the primary benefit inured to the benefit of IBM users, which was only a segment of the mainframe computer business, not a line of business.

Similarly in National Prime Users Group, Inc. v. United States, 667 F.Supp. 250 (D. Md. 1987), the District Court denied National Prime Users Group (NPUG), whose member consisted of a single computer manufacturer, tax exemption under section 501(c)(6) of the Code. NPUG had argued that its diverse membership benefited the various lines of business represented by its members. The Court in National Prime opined that "by directing its activities to users of Prime Computers, NPUG improves conditions in the segments of the lines of business represented by its members.....only those select businesses within the industry represented by NPUG's members which use Prime Products benefit from the association's existence."

Revenue Ruling 74-147, 1974-1 C.B. 136, holds that an organization comprised of members who represent diversified businesses that own, rent, or lease digital computers produced by various manufacturers, the purpose of which is to improve the efficiency of its members' use of computers, qualifies for exemption under section 501(c)(6) of the Code. The common business interest shared by the members of the organization is the common business problems concerning the use of digital computers.

[REDACTED]

Revenue Ruling 83-164, 1983-2 C.B. 95, distinguishing Revenue Ruling 74-147, holds that an organization whose members represent diversified businesses that own, rent, or lease computers produced by a single computer manufacturer does not qualify for exemption under section 501(c)(6) of the Code. The activities of the organization were limited to users of a particular computer and thus found to be benefiting a segment of a line of business rather than improving the business conditions of one or more lines of business.

You limit your members to those who are licensed users of the [REDACTED] system. Of the four members on the Board of Directors, [REDACTED], which owns all intellectual property rights and other assets associated with to the [REDACTED] system, is the only permanent member. These facts indicate that the benefits to members are product specific and distinguish you from the organization described in Revenue Ruling 74-147.

By directing your activities to the licensed users of [REDACTED] software, you are improving business conditions only in a segment of the line of business to which its members belong, rather than improving business conditions in one or more lines of business as required by section 1.501(c)(6)-1 of the Regulations. The "line of business"/"segment of a line" distinction is well established in the case law. The Supreme Court in National Muffler stated that "The 'line of business' limitation is well grounded in the origin of section 501(c)(6) and in its enforcement over a long period of time."

Traditionally, the term "line of business" is interpreted to mean either an entire industry or all components of an industry within a geographic area. The Supreme Court went on to note that "Most trade associations fall within one of these two categories. The Commissioner consistently has denied exemption to business groups whose membership and purposes are narrower." The ultimate consideration underlying these principles is that benefit must be -- industry-wide or at least sufficiently broad-based that a large cross section of the industry, not just a few select companies, benefits.

The members of your organization do not fit into either of the two traditional categories of exempt business leagues. The organization does not serve all components of an industry within a geographic area nor does it benefit a line business because it caters to the interests of select members within the industry represented. Thus, the service provided by your organization to users that are manufacturers and distributors of industrial equipment could not be said to benefit all manufacturers and distributors and manufacturers of industrial equipment (a line of business) but only manufacturers and distributors of industrial equipment who are licensed users of [REDACTED] system (a segment of a line). The constituency served by your organization cannot be said to benefit the larger group of all manufacturers and distributors of industrial who use software

[REDACTED]

packages, because the skills being taught relate to the [REDACTED] system, as opposed to skills generally transferable to other software systems. Thus, any industry-wide benefit would be incidental to the organization's primary purpose of improving conditions for licensed users of [REDACTED] software.

#### Conclusion

Like the organizations described in Revenue Ruling 83-164, and the cases relating to National Muffler Dealers Association, Inc., National Prime Users Group, Inc., and Guide International Corporation, your organization is improving only a segment of the line rather than one or more lines of business. Accordingly, you do not qualify for exemption under section 501(c) (6) of the Code.

Department of the Treasury Internal Revenue Service  
**Consent to Proposed Adverse Action**  
(All references are to the Internal Revenue Code)Prepare in  
Duplicate

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

JAN 19 1986

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

## NATURE OF ADVERSE ACTION

- ☒ Denial of exemption
- ☐ Revocation of exemption, effective
- ☐ Modification of exempt status from section 501(c)( ) to 501(c)( ), effective
- ☐ Classification as a private foundation (section 509(a)), effective
- ☐ Classification as a non-operating foundation (section 4942(j)(3)), effective
- ☐ Classification as an organization described in section 509(a)( ), effective
- ☐ Classification as an organization described in section 170(b)(1)(A)( ), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization

Signature and Title

Date

Signature and Title

Date